sequently, on the basis that a deed to the grantor is inoperative, there has been no conveyance of one-fourth of the estate, and the result reached by the court is correct.

EQUITY — JURISDICTION — CANCELLATION OF FRAUDULENT BIRTH CERTIFICATE. — *Held*, that equity has jurisdiction to perpetually enjoin the use as evidence of a fraudulent birth certificate, and to order such certificate to be cancelled. *Vanderbilt* v. *Mitchell*, 67 Atl. 97 (N. J., Ct. Err. and App.). See NOTES, p. 54.

HIGHWAYS — ADDITIONAL SERVITUDES — INTERURBAN ELECTRIC RAILROADS. — The defendant railway company operated a large number of passenger and freight trains daily over a T rail, double track line on a city street. Trains composed of heavy railroad cars were run over this line to surrounding towns at a high rate of speed and with few stops. The plaintiff, an abutting owner of the fee of the street, sued for compensation. *Held*, that he cannot recover. *Kinsey* v. *Union Traction Co.*, 81 N. E. 922 (Ind., Sup. Ct.).

A new use of the public easement over highways is an additional servitude, for which the abutting owners are entitled to compensation, if it is not within the general purpose for which the easement was created. *Schaaf* v. *Railway Co.*, 66 Oh. St. 215. A street railway is within that purpose. *Atty.-General* v. *Metropolitan Railroad Co.*, 125 Mass. 515. But a steam commercial railroad is not. *Bond* v. *Pennsylvania Co.*, 171 Ill. 508. Although there is much controversy as to an interurban electric road, the weight of authority is that if it carries freight it is an additional servitude. *Linden Land Co.* v. *Milwaukee Ry. Co.*, 107 Wis. 493. This view is adopted by the dissenting judges in the principal case, who point out that the road only differs from a steam commercial railroad in its motive power. User, however, and not motive power, is the proper test. *William* v. *City Electric St. Ry. Co.*, 41 Fed. 556. It is difficult to reconcile the decision with the authorities, but there has been a gradual development in this branch of the law in recent years recognizing the modern tendency to permit a more extensive use of highways than was originally intended, so that the case seems merely a further step in advance.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — PROMISE TO MARRY AFTER DEATH OF EXISTING WIFE. — The defendant promised to marry the plaintiff after the death of his wife, the plaintiff knowing at the time that he then had a wife. *Held*, that the contract is not void as against public policy. *Wilson* v. *Carnley*, 23 T. L. R. 757 (Eng., K. B. Div., July 31, 1907).

If a plaintiff was honestly unaware of defendant's existing marriage, that marriage is, of course, no defense to an action for breach of promise. *Wild* v. *Harris*, 7 C. B. 999; *Kelley* v. *Riley*, 106 Mass. 339. But where the plaintiff was not innocent, American courts have held that contracts looking to future marriage are immoral and give no legal rights. *Paddock* v. *Robinson*, 63 Ill. 99; *Noice* v. *Brown*, 38 N. J. L. 228. A dictum by Baron Pollock was the basis for these decisions. See *Millward* v. *Littlewood*, 5 Exch. 775. Contingencies are possible where an engagement before the death of a first wife might be upheld, for example, if made at her request, or after her insanity; but an arrangement of the kind made in the present case manifestly tends to immorality, and American law properly denotes these contracts as *contra bonos mores*. The contrary conclusion drawn by the English court appears to be due to the modern sentiment that it is impolitic to extend the classes of contracts which courts may refuse to enforce merely because the transactions they contemplate seem opposed to the public welfare.

INNKEEPERS — DUTY TO GUESTS — LIABILITY OF INNKEEPER FOR INSULT TO GUEST. — The plaintiff was a guest at the defendant's hotel. At night one of the employees of the hotel, by order of the defendant, forcibly entered the plaintiff's room, used insulting language, and threatened to turn her out as a disreputable woman. *Held*, that the defendant is not liable. *DeWolf* v. *Ford*, 104 N. Y. Supp. 876 (App. Div.).

Following the analogy of the liability of a carrier to its passengers for the torts of its servants on the basis of an implied contract to afford protection, an innkeeper has been held liable to his guest for the unauthorized tort of his servant. *Clancy* v. *Barker*, 71 Neb. 83; see 17 HARV. L. REV. 575. This case, however, presents the additional feature that no tort was committed, since only the plaintiff's personal feelings were injured. Such injury is not in general an actionable wrong. *Reed* v. *Maley*, 115 Ky. 816. But the implied contract of the carrier is extended so that it is liable to its passengers for mental suffering caused by the insults of its servants. *Gillespie* v. *Brooklyn Heights Ry. Co.*, 178 N. Y. 347. To follow the analogy of the carrier logically, the present defendant should be held liable, even though the act of his employee did not constitute a tort. And the analogy seems sufficiently close to sustain this extension. Both the carrier and the innkeeper are engaged in a public service, and their liabilities are based upon the same considerations of public policy.

INTERSTATE COMMERCE — CONTROL BY STATES — GARNISHMENT OF A CARRIER ENGAGED IN AN INTERSTATE SHIPMENT. — The plaintiff garnisheed a carrier in Georgia on account of the possession of a car of the defendant which was being used in shipping freight from another state into Georgia, and was intrusted to the garnishee under the usual agreement for forwarding the car and returning it on another shipment. *Semble*, that the garnishment would not be an unconstitutional interference with interstate commerce. *Southern, etc., Co.* v. *Northern Pac. Ry. Co.*, 127 Ga. 626.

Upon this point the case is the first to disagree with a number of contrary holdings criticized in 20 HARV. L. REV. 319.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — RECOVERY OF UNREASONABLE RATE BY SHIPPER. — The Interstate Commerce Commission declared a rate unreasonable and ordered a new rate. The plaintiff, a shipper, applied for restitution of the difference between the rate charged and that established by the Commission. *Held*, that he can recover. *Southern Ry. Co.* v. *Tift*, 206 U. S. 428.

It has been held that a shipper has no remedy in the courts until the Interstate Commerce Commission has passed on the reasonableness of a rate. *Texas, etc., Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426. See 20 HARV. L. REV. 576. But this is only a matter of procedure, not affecting the shipper's ultimate right not to be overcharged, if when a rate is declared unreasonable he can recover the excess previously paid. The court also, by dicta, limits the application of this rule of procedure to actions at law for damages, declaring that the Interstate Commerce Act leaves unimpaired the jurisdiction of a court of equity to restrain the enforcement of unreasonable rates.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — COMMERCE WITH NAVY YARDS UNDER EXCLUSIVE FEDERAL JURISDICTION. — A Virginia statute imposed a penalty on telegraph companies for failure to deliver messages. The defendant company failed to deliver a message sent from a point within the state to the plaintiff in the Norfolk Navy Yard, which was under the exclusive jurisdiction of the federal government. *Held*, that the Commerce Clause of the Constitution gives Congress no authority over this message such as to render the state statute inapplicable. *Western Union Telegraph Company* v. *Chiles*, 57 S. E. 587 (Va.).

The Commerce Clause, in regard to commerce "among the states," has been regarded as giving Congress exclusive jurisdiction only over commerce which concerns more than one *state*. See *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1. Yet it has been held that an act of the Legislative Assembly of the District of Columbia imposing a license on drummers is indistinguishable, as regards the Commerce Clause, from a similar state act, and therefore is void so far as applied to those soliciting for individuals outside the District. *Stoutenburgh* v. *Hennick*, 129 U. S. 141. The authority of Congress over places purchased by the consent of the legislature of a state for dockyards, etc., is like its author-